

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-81

In the Matter of

Amendment of Section 73.606(b), RM-7875
Table of Allotments,
Television Broadcast Stations.
(Farmington and Gallup, New Mexico)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 7, 1992; Released: April 16, 1992

Comment Date: June 8, 1992

Reply Comment Date: June 23, 1992

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Pulitzer Broadcasting Company ("petitioner"), permittee of Station KOAV-TV, Channel 3, Gallup, New Mexico. Petitioner, pursuant to Section 1.420(i) of the Commission's Rules, requests the reallocation of Channel 3 from Gallup to Farmington, New Mexico, as the community's second local VHF television service, and the modification of Station KOAV-TV's construction permit to specify Farmington as its community of license.

2. Petitioner contends that its request complies with the dictates of the Commission's decision in *Modification of FM and TV Authorizations to Specify a New Community of License* ("Modification of License I"), 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Modification of License II"), 5 FCC Rcd 7094 (1990). It states that a proposal to change a station's community of license may be granted if the existing and proposed allotments are mutually exclusive, the new allotment better serves the Commission's allotment priorities and the reallocation of the channel will not deprive the original community of its only existing local transmission service. Petitioner submits that adoption of its proposal would indeed satisfy all of the above requirements. First, the allotment of Channel 3 at Farmington is mutually exclusive with its allotment at Farmington since the two communities are located closer than the 304.9 kilometers (189.5 miles) required for co-channel allotments. Secondly, the allotment of Channel 3 at Farmington would better serve the allotment priorities

because it would provide a first television reception service to at least 11,232 persons and a second such service to at least 90,462 persons. In addition, the channel would be reallocated to a more populous community and one which has a greater economic, cultural and social stature within the state.¹ Lastly, the reallocation of channels will not deprive Gallup of its sole existing local transmission service because petitioner has not yet constructed Station KOAV.

3. Gallup, with a population of 19,154 persons, is located in McKinley County (population 60,686),² and has allotted to it commercial VHF TV Channels 3 and 10, as well as Channel 8 which is reserved for noncommercial educational use. While these channels were allotted to Gallup by the Commission in 1952, with the exception of Station KOAV's outstanding construction permit on Channel 3, none of the channels are occupied or applied for.³ According to the petitioner, Gallup also receives secondary television reception service from eight translator stations.⁴ Farmington, with a population of 33,997 persons, is located in San Juan County (population 91,605) and has allotted to it commercial VHF TV Channel 12, which is licensed to Station KOFB, and unoccupied and unapplied for UHF TV Channel 15, which is reserved for noncommercial educational use.

4. Petitioner states that reallocating Channel 3 to Farmington would enable Station KOAV to provide service to a total of 142,098 persons, based upon 1986 Census data, which includes a first television reception service to 11,232 persons within an area of 2,610 square kilometers (1,008 square miles). In addition, petitioner claims that Station KOAV would provide Farmington with a first competitive and second reception service. According to petitioner, this second reception service covers an area of 13,095 square kilometers (5,058 square miles) with a population of 90,462 persons. It recognizes that the communities of Farmington, Bloomfield and Aztec, New Mexico, are within the theoretical Grade B contour of Station KREZ-TV, Channel 6, Durango, Colorado. However, it submits an engineering report showing that terrain obstructions between Durango and the New Mexico communities in reality prevent the Durango signal from covering this area.

5. Petitioner also states that the proscription against removing a community's sole local broadcast transmission service does not apply in this case. Station KOAV does not represent an existing service because it is non-operational. It points to the *Modification of License II* where the Commission stated that for the purposes of change of community rule makings, unconstructed permits would not be considered as an "existing service." Further, because the construction permit was not granted as the result of a comparative hearing, there is also no requirement that Station KOAV operate at Gallup for at least one year before seeking a change in community. The petitioner also recognizes the Commission's concern that

¹ The television allotment priorities are: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services availability to the community from stations located in other

communities. See *Sixth Report and Order on Television Allocations*, 41 FCC 148, 167 (1952).

² Population figures are taken from the 1990 U.S. Census, unless otherwise indicated.

³ See *Sixth Report and Order on Television Allocations*, *supra*.

⁴ There are also construction permits outstanding for three additional translators and pending applications for another three translators.

changing a station's community of license could result in the loss of service to an area accustomed to receiving the station's signal. However, petitioner contends that such concerns are not present here because Station KOAV is not on the air and thus there is no existing reception service to lose.

DISCUSSION

6. We believe that the public interest would be served by soliciting comments on petitioner's proposal to reallocate Channel 3 from Gallup to Farmington, New Mexico. If adopted, Channel 3 could provide Farmington with a first local competitive television service without depriving Gallup of its sole existing local service. We tentatively conclude that an unbuilt construction permit should not be considered an existing service in the context of change of community rule makings. See *Modification of License II, supra*. In addition, petitioner does not seek to reallocate Channel 3 from a rural to an urbanized area. However, while each of these factors have led us to the conclusion that the petition meets the threshold requirements for consideration, a grant of the proposal must be predicated on a finding that the reallocation would result in a preferential arrangement of allotments.

7. Petitioner contends that the allotment of Channel 3 to Farmington would provide a first Grade B reception service to 11,232 persons and a second such service to an additional 90,462 persons. Petitioner states that it arrives at the first and second service figures by factoring in terrain obstructions between Durango and the New Mexico communities of Farmington, Bloomfield and Aztec. However, according to the petitioner, Station KREZ-TV's Grade B contour, as shown in Figure 3 of its engineering statement, does not reflect the station's actual signal attenuation. Petitioner states that it is impractical to determine the actual location of the Grade B contour in sparsely populated and often inaccessible rural areas based upon field strength measurements. Therefore, its population determination is based upon the predicted contour locations of Stations KREZ-TV, KOBF, KKTO and KOAV's assumed Farmington operation, except that the population of Farmington, Bloomfield and Aztec have been added to the total for second service which would be provided by Station KOAV. From the showings provided by the petitioner, we are unable to verify the claimed first and second television service. Therefore, we request that the petitioner provide a map showing the approximate contour of Station KREZ-TV's actual coverage. The showing should also include a modified contour for Station KOAV at Farmington which accounts for the signal shielding in the direction of Durango.

8. Petitioner submits that the activation of Channel 3 at Gallup, with the facilities authorized in Station KOAV's construction permit, would provide a first Grade B service to 62,195 persons, while only 11,232 persons would receive a first Grade B service from the proposed Far-

mington station. Further, none of the population which would receive the first Grade B service from the Gallup station will receive service from a Farmington Channel 3 operation. In this regard, we are concerned that by deleting Channel 3 from Gallup we may be depriving the community of its only potential service, as evidenced by the fact that Channel 3 is the only channel that has been applied for. Thus, it appears that the only primary reception service to this population, at least in the short term, would come from Station KOAV.⁵ Finally, we note that UHF TV Channels 24, 25, 28, 31, 36 and 38 can be allotted to Farmington to provide the community with an additional local television service without removing Channel 3 from Gallup. Therefore, petitioner is requested to submit information demonstrating why the reallocation of Channel 3 from Gallup to Farmington, rather than the allotment of a UHF channel to Farmington and the retention of Channel 3 at Gallup, would result in a preferential arrangement of allotments.

9. Channel 3 can be allotted to Farmington in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.7 kilometers (2.9 miles) southeast.⁶ Although the Commission has imposed a temporary freeze on new television allotments in certain metropolitan areas, the proposed allotment at Farmington is not affected.⁷

10. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Farmington, New Mexico	12+, *15+	3, 12+, *15
Gallup, New Mexico	3, *8-, 10	*8-, 10

11. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

12. Interested parties may file comments on or before **June 8, 1992**, and reply comments on or before **June 23, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

⁵ Petitioner states that the anticipated programming of Station KOAV at Gallup-- satellite retransmission of Station KOAT-TV, Albuquerque -- is available on the local cable system and on a translator station. However, we have not considered these services as a substitute for over-the-air service in allotment proceedings, and we tentatively decline to do so here. See, e.g., *Television Satellite Stations Review of Policy and Rules*, 6 FCC

Rcd at 4215, n. 19, n. 21.

⁶ The coordinates for Channel 3 at Farmington are North Latitude 36-41-48 and West Longitude 108-10-39.

⁷ See *Order, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 52 Fed. Reg. 28346, published July 29, 1987.

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13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

14. For further information concerning this proceeding, contact Leslie K. Shapiro or Stanley Schmulewitz, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.